

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MARIJA BOHAREVICIENE,

Plaintiff,

v.

**RUTH A. DOROCHOFF, Chicago District
Director of the Citizenship and Immigration
Services; MICHAEL CHERTOFF, Secretary
of the U.S. Department of Homeland Security;
and ROBERT S. MUELLER, III, Director
of the Federal Bureau of Investigation,**

Defendants.

CASE NO.

JUDGE'S COPY: AUGUST 28, 2008

08CV4941

JUDGE COAR

MAGISTRATE JUDGE KEYS

EDA

COMPLAINT FOR MANDAMUS

Plaintiff MARIJA BOHAREVICIENE, by and through her attorneys, Kempster, Keller & Lenz-Calvo, Ltd., for her Complaint for Mandamus against Defendants, RUTH A. DOROCHOFF, District Director of the Chicago Office for the U.S. Citizenship and Immigration Services; MICHAEL CHERTOFF, Secretary of Homeland Security; and ROBERT S. MUELLER, III, Director of the Federal Bureau of Investigation, alleges as follows:

Nature of the Case and Parties

1. This is a civil action to compel the Chicago District Director of the Office for Citizenship and Immigration Services to adjudicate Plaintiff's Form I-485 Application to Adjust Status ("Application") that was filed on May 11, 2006. *See Exhibit A-1.*
2. Plaintiff MARIJA BOHAREVICIENE was born in Lithuania on July 21, 1955. Ms. Bohareviciene qualified for her Application based on her marriage to her husband, Mr.

Valentinas Boharevicius, who was then a lawful permanent resident of the United States.

Ms. Bohareviciene and her husband reside together in Woodridge, Illinois.

3. Defendants are the District Director of the Chicago Office for U.S. Citizenship and Immigration Services (the "Service" or "USCIS"), the Secretary of the Department of Homeland Security, and the Director of the Federal Bureau of Investigation. They are being sued in their official capacity.

Jurisdiction and Venue

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1361, and 2201 *et seq.*, and 5 U.S.C. § 701 *et seq.*
5. Venue is proper in this District pursuant to 28 U.S.C. §1391(e) because the events and omissions giving rise to this matter occurred in this District, and Plaintiff resides in this District.

Statement of the Case

6. Ms. Bohareviciene filed her I-485 Application to Adjust Status with the Service based on her marriage to a United States permanent resident. *See Exhibit A-1.*
7. After filing her application, Plaintiff attended her Adjustment of Status interview with her husband on September 7, 2006 in Chicago, Illinois. *See Exhibit A-2.* After the interview, the officer indicated to Plaintiff that her Application was otherwise approvable, but a decision could not be rendered at that time because of pending security checks. *See Exhibit A-3.*
8. Since the interview, the background checks do not appear to have been completed, and the Service has not adjudicated the Application. Plaintiff and her attorneys have filed

inquires with the Service to determine the status of the Application and to request that the Service adjudicate the Application. *See Exhibits B-1, B-2, and B-3.*

9. Plaintiff requested the assistance of the Office of U.S. Representative Judy Biggert to file an inquiry on her behalf regarding the status of the Application. Representative Biggert's office filed an inquiry electronically with the Congressional Legislative Affairs Office, and the FBI responded on January 16, 2007. The response indicated that Ms. Bohareviciene's application has been pending name checks since May 26, 2006. *See Exhibit B-1.* Through the response, Ms. Bohareviciene learned that the immigration applications for her husband and son were also pending name checks.
10. After waiting one year from the date of the FBI's response, Ms. Bohareviciene retained counsel to begin filing inquiries on her behalf in January 2008. On January 9, 2008, Ms. Bohareviciene's attorneys filed an inquiry with the Service. *See Exhibit B-2.* The Service responded three months later on March 10, 2008, indicating that Ms. Bohareviciene's application is pending security checks. *See Exhibit B-2.* With the response, the Service attached a copy of a February 20, 2007 USCIS Update (the "Update") titled, "USCIS Clarifies Criteria to Expedite FBI Name Check." The Update enumerates the narrow eligibility requirements for requesting expedited name checks on delayed immigration applications. Plaintiff was not requesting an expedited name check, just the adjudication of her application that has been pending since May 2006.
11. The Service's March 2008 correspondence fails to acknowledge a USCIS policy announced on February 4, 2008. USCIS has authorized the practice of adjudicating I-485 applications for adjustment of status that are otherwise approvable if name checks have been pending more than 180 days. An Interoffice Memorandum issued by Michael

Aytes, Associate Director, Domestic Operations of USCIS, states, "Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the I-485...and proceed with card issuance." *See Exhibit C.*

12. In February 2008, Plaintiff requested the assistance of the Office of the Honorable Richard J. Durbin, U.S. Senator of Illinois. Senator Durbin's office filed an inquiry on February 13, 2008, and the Service's response indicated that pending name checks were causing the delay. *See Exhibit B-3.* In the response, the Service noted its procedure of approving adjustment of status applications if the cases are otherwise approvable and name checks have been pending for more than 180 days. At this stage of Ms. Bohareviciene's application process, her I-485 had remained unadjudicated despite a name check pending one year and nine months. The Service indicated in its February 2008 correspondence that cases affected by the name check policy modification, such as Ms. Bohareviciene's, would be processed within thirty days. Six months have passed since the Service issued that correspondence.
13. As the above shows, Plaintiff has repeatedly filed inquiries and maintained correspondence with the Service to adjudicate her Application. Plaintiff filed her application on May 11, 2006 and her application has yet to be adjudicated.
14. On information and belief, the normal period prescribed by Defendants to adjudicate a Form I-485 Application to Adjust Status is six months. *See Exhibit D.* According to USCIS, the Chicago District Office is currently processing I-485 applications that were filed in January 2008. Plaintiff's application was filed in May 2006. To date, two years

and three months have passed since the Service received Plaintiff's application and the FBI received Ms. Bohareviciene's information to process her name check.

Claim for Relief

15. Defendants, in violation of the Administrative Procedures Act, 5 U.S.C. § 701 *et seq.*, are unlawfully withholding or unreasonably delaying action on Plaintiff's application and have failed to carry out the adjudicative functions delegated to them by law with regard to Plaintiff's case.
16. Defendants willfully and unreasonably have delayed in, and have refused to adjudicate Plaintiff's application, thereby, depriving Plaintiff of her rights under 5 U.S.C. § 555(b) to the adjudication of her application in a reasonable time.
17. Defendants owe Plaintiff the duty to act on her application within a reasonable time and have unreasonably failed to perform that duty.
18. Plaintiff has made numerous status inquiries in an attempt to secure adjudication of her application.
19. Plaintiff has exhausted any administrative remedies that may exist, and has not caused or contributed to the Service's delay in adjudicating her Application.

Prayer for Relief

WHEREFORE Plaintiff prays that this Court:

- A. Accept jurisdiction and maintain continuing jurisdiction of this Action.
- B. Compel Defendant FBI to issue the results of a criminal background and/or name check relating to Plaintiff's application, to the extent that one may be required, to the Service and the Court within thirty (30) days.
- C. Compel Defendants Service and District Director to adjudicate Plaintiff's application within thirty (30) days.
- D. Grant such other and further relief as this Court deems proper under the circumstances.

Dated: August 28, 2008

/s/ Robert C. Milla
Robert C. Milla

KEMPSTER, KELLER & LENZ-CALVO, LTD.
332 S. Michigan Avenue, Suite 1428
Chicago, IL 60604
No. 6290234
(312) 341-9730
Attorneys for Plaintiff

MARIJA BOHAREVICIENE

EXHIBITS:

- Exhibits A-1 – A-3** Copies of Form I-797C Notices of Action, verifying the receipt date of Plaintiff's Form I-485 Application to Adjust Status and Plaintiff's interview for her application. Copy of results from Plaintiff's interview for adjustment of status.
- Exhibits B-1 – B-3** Copies of correspondence with the Service regarding Plaintiff's application.
- Exhibit C** USCIS Interoffice Memo from Michael Aytes, Associate Director, Domestic Operations, "Revised National Security Adjudication and Reporting Requirements"
- Exhibit D** Most recent printout of USCIS processing dates for Chicago District Office posted on July 15, 2008.



Receipt Number: MSC-06-227-16501		Case Type: I-485 - Application to Register Permanent Residence or Adjust Status	
Received Date: May 11, 2006	Priority Date:	Applicant:	A096817203 BOHAREVICIENE, MARIJA
Notice Date: May 17, 2006	Page 1 OF 1	ASC Code:	3

MARIJA BOHAREVICIENE 7939 CHESTERTON CT WOODRIDGE IL 60517	Notice Type: Receipt Notice Amount Received: \$395.00
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The above application has been received. **Please notify us immediately if any of the above information is incorrect.** If you find it necessary to contact this office in writing, you must include a copy of this receipt notice with your inquiry.

BIOMETRICS-

The next step is to have your biometrics taken, if required, at a US Citizenship and Immigration Services (USCIS) Application Support Center (ASC).

PLEASE NOTE-

USCIS WILL SCHEDULE YOUR BIOMETRICS APPOINTMENT. You will be receiving an appointment notice with a specific time, date and place where you will have your fingerprints and/or photos taken.

WHAT TO BRING TO Your appointment -

Please bring this letter and your photo identification to your appointment. Acceptable kinds of photo identification are:

- a passport or national photo identification issued by your country,
- a driver's license,
- a military photo identification, or
- a state-issued photo identification card.

If you do not bring this letter and photo identification, we cannot process you.

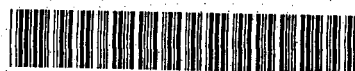
Please bring a copy of all receipt notices received from USCIS in relation to your current application for benefits.

CASE STATUS -

Information about your local office processing times may be obtained by calling the NCSC at 1-800-375-5283.

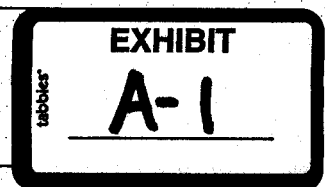
If you have Internet access, you can visit the United States Citizenship and Immigration Services website at www.USCIS.gov where you can find valuable information about forms, filing instructions, and immigration services and benefits.

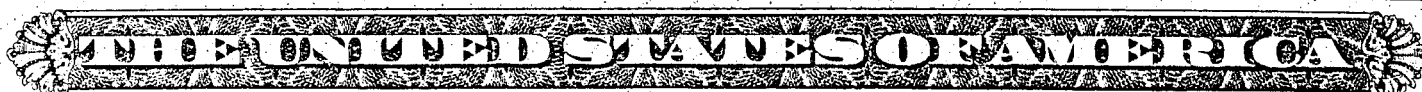
U. S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064
National Customer Service Center: 1-800-375-5283




5184709

0003339358





REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW			NOTICE DATE July 20, 2006		
CASE TYPE FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS			A# A 096 817 203		
APPLICATION NUMBER MSC0622716501	RECEIVED DATE May 11, 2006	PRIORITY DATE May 11, 2006	PAGE 1 of 1		
MARJA BOHAREVICIENE 7939 CHESTERTON CT WOODRIDGE IL 60517					
<p>You are hereby notified to appear for the interview appointment, as scheduled below, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485) and any supporting applications or petitions. <u>Failure to appear for this interview and/or failure to bring the below listed items will result in the denial of your application.</u> (8 CFR 103.2(b)(13))</p> <p>Who should come with you?</p> <ul style="list-style-type: none"><input type="checkbox"/> If your eligibility is based on your marriage, your husband or wife must come with you to the interview.<input type="checkbox"/> If you do not speak English fluently, you should bring an interpreter.<input type="checkbox"/> Your attorney or authorized representative may come with you to the interview.<input type="checkbox"/> If your eligibility is based on a parent/child relationship and the child is a minor, the petitioning parent and the child must appear for the interview. <p>*NOTE: Every adult (over 18 years of age) who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview.</p> <p>YOU MUST BRING THE FOLLOWING ITEMS WITH YOU: (Please use as a checklist to prepare for your interview)</p> <ul style="list-style-type: none"><input type="checkbox"/> This Interview Notice and your Government issued photo identification.<input type="checkbox"/> A completed medical examination (Form I-693) and vaccination supplement in a sealed envelope (unless already submitted).<input type="checkbox"/> A completed Affidavit(s) of Support (Form I-864) with all required evidence, including the following, for each of your sponsors (unless already submitted):<ul style="list-style-type: none"><input type="checkbox"/> Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years;<input type="checkbox"/> Letters from each current employer, verifying current rate of pay and average weekly hours, and pay stubs for the past 2 months;<input type="checkbox"/> Evidence of your sponsor's and/or co-sponsor's United States Citizenship or Lawful Permanent Resident status.<input type="checkbox"/> All documentation establishing your eligibility for Lawful Permanent Resident status.<input type="checkbox"/> Any immigration-related documentation ever issued to you, including any Employment Authorization Document (EAD) and any Authorization for Advance Parole (Form I-512).<input type="checkbox"/> All travel documents used to enter the United States, including Passports, Advance Parole documents (I-512) and I-94s (Arrival/Departure Document).<input type="checkbox"/> Your Birth Certificate.<input type="checkbox"/> Your petitioner's Birth Certificate and your petitioner's evidence of United States Citizenship or Lawful Permanent Resident Status.<input type="checkbox"/> If you have children, bring a Birth Certificate for each of your children.<input type="checkbox"/> If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring:<ul style="list-style-type: none"><input type="checkbox"/> A certified copy of your Marriage Document issued by the appropriate civil authority.<input type="checkbox"/> Your spouse's Birth Certificate and your spouse's evidence of United States Citizenship or Lawful Permanent Resident status;<input type="checkbox"/> If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse;<input type="checkbox"/> Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you;<input type="checkbox"/> Supporting evidence of your relationship, such as copies of any documentation regarding joint assets or liabilities you and your spouse may have together. This may include: tax returns, bank statements, insurance documents (car, life, health), property documents (car, house, etc.), rental agreements, utility bills, credit cards, contracts, leases, photos, correspondence and/or any other documents you feel may substantiate your relationship.<input type="checkbox"/> Original and copy of each supporting document that you submitted with your application. Otherwise, we may keep your originals for our records.<input type="checkbox"/> If you have ever been arrested, bring the related Police Report and the original or certified Final Court Disposition for each arrest, even if the charges have been dismissed or expunged. If no court record is available, bring a letter from the court with jurisdiction indicating this.<input type="checkbox"/> A certified English translation for each foreign language document. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate. <p>YOU MUST APPEAR FOR THIS INTERVIEW: If an emergency, such as your own illness or a close relative's hospitalization, prevents you from appearing, call the U.S. Citizenship and Immigration Services (USCIS) National Customer Service Center at 1-800-375-5283 as soon as possible. Please be advised that rescheduling will delay processing of application/petition, and may require some steps to be repeated. It may also affect your eligibility for other immigration benefits while this application is pending.</p> <p>If you have questions, please call the USCIS National Customer Service Center at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833).</p> <table border="1"><tr><td>PLEASE COME TO: U.S. Citizenship and Immigration Services 101 W. CONGRESS PKWY, 2ND FL. 2ND FLOOR CHICAGO IL 60605</td><td>ON: Thursday, September 07, 2006 AT: 10:40 AM</td></tr></table>				PLEASE COME TO: U.S. Citizenship and Immigration Services 101 W. CONGRESS PKWY, 2ND FL. 2ND FLOOR CHICAGO IL 60605	ON: Thursday, September 07, 2006 AT: 10:40 AM
PLEASE COME TO: U.S. Citizenship and Immigration Services 101 W. CONGRESS PKWY, 2ND FL. 2ND FLOOR CHICAGO IL 60605	ON: Thursday, September 07, 2006 AT: 10:40 AM				
23		<div style="border: 2px solid black; padding: 5px; text-align: center;">EXHIBIT A-2</div>			

U.S. Department of Homeland Security
10 West Jackson Boulevard
Chicago, Illinois 60604



U.S. Citizenship
and Immigration
Services

A96 817 203

Date: September 7, 2006

Marija Bohareviciene

Dear Applicant:

Although we have completed the interview on your application we cannot make a decision on your case because the required security checks are incomplete. Once the background investigation is completed we will make and inform you of our decision as quickly as possible.

We understand that you may be frustrated by this news. However, in order to fulfill its mission to provide immigration benefits and services to the public, USCIS must balance its obligations to the individual applicant against its obligations to the public as a whole. Consequently, we have adopted enhanced security check procedures.

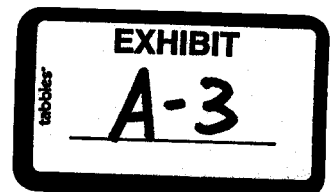
Given the significance of immigration benefits and the number of applications submitted, it is inevitable that some applications will require more attention than others. Some factors that may lead to delays are the volume of record checks, the number of records to be checked and the processing of common names. For the vast majority of applicants, USCIS is able to quickly determine whether there is any criminal or security related eligibility issues. In the remaining cases, often referred to as "pending," a match of some kind has been identified and must be resolved before a decision can be made on the case. However, a match does not always lead to a denial of the application. USCIS does not share information regarding the specific nature of the match or the nature or status of any investigation with applicants or their representatives.

We remain committed to processing cases within a reasonable period of time. In some cases, however, unresolved security concerns will create delays. We ask for your patience in such cases, and in return we promise to continue to seek resolution as quickly as possible in each individual case.

Sincerely,

A handwritten signature in cursive script, reading "Ruth A. Dorochoff".

Ruth A. Dorochoff
District Director



A review of the Federal Bureau of Investigation's Name Check Program databa... Page 1 of 1

08CV4941

JUDGE COAR

MAGISTRATE JUDGE KEYS

EDA

Litwin, Lydia**From:** [REDACTED]**Sent:** Tuesday, January 16, 2007 6:30 AM**To:** Litwin, Lydia**Subject:** Name Check Request

A review of the Federal Bureau of Investigation's Name Check Program database concerning:

Name	Date Received	Status
VALENTINAS BOHAREVICIUS	11/26/2004	PENDING
MARIJA BOHAREVICIENE	05/26/2006	PENDING
ANDRIUS BOHAREVICIUS	11/13/2005	PENDING

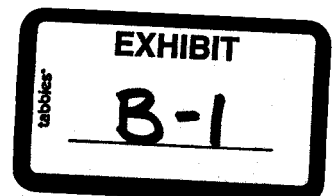
The FBI processes millions of name check requests each year with each requiring thoughtful consideration. We know how important this information must be to your constituent; however, the FBI must also balance the need for national security in preparing the response to each of these requests. The FBI's homeland security mission requires that our name check process be primarily focused on an accurate and thorough result. While an exact date for completion of this review cannot be given be assured that the results will be made available to the immigration authorities as quickly as possible.

I trust this information will assist you in responding to your constituents.

Sincerely,

Michael A. Cannon/dc
 Section Chief
 National Name Check Program Section
 Records Management Division
 Federal Bureau of Investigation

IT IS REQUESTED THAT YOU DO NOT SEND MESSAGES BACK TO THIS EMAIL ADDRESS. IF YOU
 PROVIDE THIS EMAIL OUTSIDE OF YOUR OFFICE.



J [REDACTED]

From: J [REDACTED]
Sent: Wednesday, January 09, 2008 10:34 AM
To: [REDACTED]@dhs.gov
Subject: BOHAREVICIENE, Marija A47 141 681

To Whom It May Concern:

I am the legal assistant to Donald B. Kempster, the attorney on record (G-28 attached).



BOHAREVICIENE,
Marija.pdf

On **September 7, 2006** Ms. Bohareviciene was present in the Chicago District Office for her I-485 interview. At the time, Ms. Bohareviciene received a letter stating her background checks had not been cleared. To date we have not received any further information.

Please provide us with updated status and adjudicate Ms. Bohareviciene I-485 at your earliest convenience.

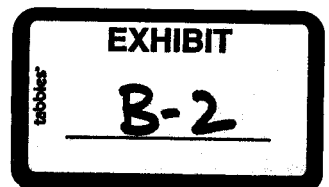
If you have any questions in regard to this matter please do not hesitate to contact our office.

J [REDACTED]
Legal Assistant

Kempster, Keller & Lenz-Calvo, Ltd.
332 S. Michigan Ave.,
Suite 1428
Chicago, IL 60604

(312) 341-9730
FAX: (312) 341-0399

www.klc-ltd.com



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Domestic Operations Directorate
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

HQCIS 181/48.2-C


Dear [REDACTED]

Thank you for your correspondence January 9, 2008, to the U.S. Citizenship and Immigration Services (USCIS). The following response is provided for your information/action.

We have researched your client, Marija Bohareviciene's case to determine the status of Form I-485, Application to Register Permanent Residence or Adjust Status. Our records reflect that the processing of her case has been delayed because the required investigation into her background is still in process. Once the background investigation is completed, we will move forward on her case.



Please understand that these background checks are required to be completed on all applicants who apply for the immigration benefit you are seeking. Attached you will find two enclosures with detailed information regarding why the process exists, how it works, as well as the circumstances when the process can be expedited.

While an exact date for completion of her background check cannot be given at this time, we will make every effort to make a decision on this case as soon as the background checks are complete.


Page 2

We appreciate your continued patience. If you need additional assistance or filing instructions, we invite you to contact the USCIS National Customer Service Center at 1-800-375-5283 or visit our website at www.uscis.gov.

Sincerely,

S  B 
Customer Assistance Office
Citizenship and Immigration Services
Department of Homeland Security

Enclosures: Fact Sheet, "Immigration Security Checks- How and Why the Process Works"
USCIS Update, "USCIS Clarifies Criteria to Expedite FBI Name Check"

CHI 2144 SB

Office of Communications
U.S. Department of Homeland Security



U.S. Citizenship
and Immigration
Services

February 20, 2007

USCIS Update

USCIS CLARIFIES CRITERIA TO EXPEDITE FBI NAME CHECK *Federal Litigation Removed as Sole Basis to Expedite Check*

WASHINGTON – U.S. Citizenship and Immigration Services (USCIS) is no longer routinely requesting the FBI to expedite a name check when the only reason for the request is that a mandamus (or other federal court petition) is filed in the case.

USCIS may continue to request an expedited FBI name check if the case meets one of the other approved criteria, including:

1. Military deployment,
2. Age-out cases not covered under the *Child Status Protection Act*, and applications affected by sunset provisions such as diversity visas,
3. Significant and compelling reasons, such as critical medical conditions, and
4. Loss of social security benefits or other subsistence at the discretion of the USCIS District Director.

The FBI name check is an invaluable part of the security screening process, ensuring that our immigration system is not used as a vehicle to harm our nation or its citizens. USCIS also requests an FBI name check to screen out people who seek immigration benefits improperly or fraudulently and ensure that only eligible applicants receive benefits.

Information about the FBI name check is available on the USCIS website at <http://www.uscis.gov> or by calling the USCIS National Customer Service Center toll free at 1-800-375-5283.

–USCIS–

On March 1, 2003, U.S. Citizenship and Immigration Services became one of three legacy INS components to join the U.S. Department of Homeland Security. USCIS is charged with fundamentally transforming and improving the delivery of immigration and citizenship services, while enhancing our nation's security.

RICHARD J. DURBIN
ILLINOIS

COMMITTEE ON APPROPRIATIONS

COMMITTEE ON THE JUDICIARY

COMMITTEE ON RULES
AND ADMINISTRATION

ASSISTANT MAJORITY
LEADER

United States Senate
Washington, DC 20510-1504

April 29, 2008

309 HART SENATE OFFICE BUILDING
WASHINGTON, DC 20510-1304
(202) 224-2152
TTY (202) 224-8180

230 SOUTH DEARBORN, 38TH FLOOR
CHICAGO, IL 60604
(312) 353-4952

525 SOUTH EIGHTH STREET
SPRINGFIELD, IL 62703
(217) 492-4062

701 NORTH COURT STREET
MARION, IL 62959
(618) 998-8812

durbin.senate.gov

Ms. Marija Bohareviciene
7939 Chesterton Ct.
Woodridge, IL 60517

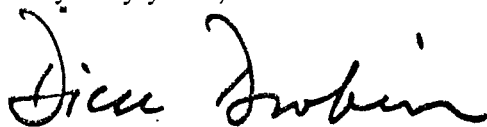
Dear Ms. Bohareviciene:

I have received the enclosed response from the USCIS, regarding my office's inquiry on your behalf.

I trust that we have been of service to you.

Please feel free to contact my office again if we can assist you in other matters of federal concern.

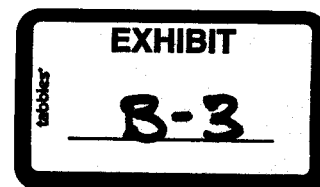
Very truly yours,



Richard J. Durbin
United States Senator

230 South Dearborn St.
Suite 3892
Chicago, Illinois 60604
312/353-4952

RJD/kl



Love, Kai (Durbin)

From: Hardy, Gwendolyn [REDACTED] on behalf of CHI-Congressional1 [REDACTED]
Sent: Monday, February 25, 2008 4:16 PM
To: Love, Kai (Durbin)
Subject: RE: A 96 817 203 Marija Bohareviciene

The Honorable Richard J. Durbin
U.S. Senator
230 South Dearborn, Suite 3892
Chicago, IL 60604
Attn: Kai A. Love

February 25, 2008

A96-817-203 Marija Bohareviciene

Dear Senator Durbin:

United States Citizenship and Immigrations Services (USCIS) is committed to protecting national security while, at the same time, providing immigration services to our customers fairly. To enhance national security and to ensure the integrity of the immigration process, USCIS conducts background checks on all applicants, petitioners, and beneficiaries seeking immigration benefits. Previously, USCIS mandated the completion of FBI name checks on certain form types before the approval of the application. Recently, the agency modified that guidance, allowing form I-485, Application to Register Permanent Residence or Adjust Status adjudications, to be approved if the case is otherwise approvable and the FBI has not provided any actionable, derogatory or adverse information in response to the name check within 180 days of the name check query.

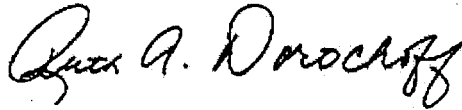
USCIS expects that the majority of cases affected by the name check policy modification will be processed within thirty days. Cases that will be affected by this modification include cases that meet the following conditions: 1) an adjustment interview was previously conducted; 2) all other background check results are complete; 3) a visa number is available; 4) the case is determined to be approvable with the exception of the pending FBI name check result and; 5) the FBI has not provided any actionable, derogatory or adverse information in response to the name check within 180 days of the name check query. However, USCIS also expects there will be some offices, or individual cases that will not meet the thirty day processing estimate due to extenuating circumstances such as a high volume of affected cases at a particular office or because an individual case requires an updated fingerprint check.

While USCIS will dedicate an appropriate level of staffing and priority to this affected workload, we will not cancel interviews in order to concentrate all resources on these cases. We will simultaneously process cases in our current workload, as well as the cases that are affected by the new development in FBI name check policy and must ensure sufficient resources for continued processing of both workloads.

The modification to USCIS name check policy as it relates to I-485 Applications will not limit Department of Homeland Security's (DHS) ability to detain and remove dangerous aliens. In the unlikely event that USCIS receives adverse information after the application is approved, DHS has the authority to detain and deport the alien. Any applications that are approved under this policy will be closely monitored and should any actionable adverse information be returned from the FBI, USCIS will

immediately initiate removal proceedings.

Sincerely,



Ruth A. Dorochoff
District Director

From:
Sent: Wednesday, February 13, 2008 1:55 PM
To: CHI-Congressional1
Subject: FW: A 96 817 203 Marija Bohareviciene

From: Love, Kai (Durbin) [REDACTED]
Sent: Wednesday, February 13, 2008 11:54 AM
To: CHI-Congressional
Subject: A 96 817 203 Marija Bohareviciene

Ms. Bohareviciene is seeking the status of her I-485. The address provided is:

7939 Chesterton Court
Woodridge, IL 60517

We have a privacy release on file.

Thanks,

Kai

Kai A. Love
Director, Constituent Services
Office of U.S. Senator Richard J. Durbin
230 S. Dearborn, Ste. 3692, Chicago, IL 60604
Phone 312-353-4952 Fax 312-353-0150
[REDACTED]

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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Domestic Operations of Directorate
Washington, DC 20529




U.S. Citizenship
and Immigration
Services

FEB 4 - 2008

HQ 70/23 & 70/28.1

Interoffice Memorandum

TO: Field Leadership

FROM: Michael Aytes 
Associate Director, Domestic Operations

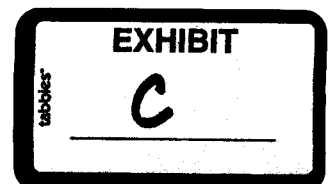
SUBJECT: Revised National Security Adjudication and Reporting Requirements

Background

U.S. Citizenship and Immigration Services (USCIS) conducts background checks on all applicants, petitioners, and beneficiaries seeking immigration benefits. This is done both to enhance national security and to ensure the integrity of the immigration process. USCIS has previously mandated that FBI name checks be completed and resolved before any positive adjudication can proceed on certain form types. This memorandum modifies existing guidance for applications where statutory immigration provisions allow for the detention and removal of an alien who is the subject of actionable information that is received from the FBI or other law enforcement agencies after approval of the application.

USCIS is issuing revised guidance in response to recommendations of the DHS Office of Inspector General (OIG-06-06) regarding the need to align the agency's background and security check policies with those of U.S. Immigration and Customs Enforcement (ICE). The *Background and Security Investigations in Proceedings Before Immigration Judges and the Board of Immigration Appeals* regulations prevent immigration judges and the Board of Immigration Appeals (BIA) from granting benefits to aliens before DHS confirms that all background and security checks have been completed. See 8 C.F.R. § 1003.47(g); 8 C.F.R. § 1003.1(d)(6)(i). In the context of removal proceedings, ICE has determined that FBI fingerprint checks and Interagency Border Inspection Services (IBIS) checks are the required security checks for purposes of the applicable regulations. In the unlikely event that FBI name checks reveal actionable information after the immigration judge grants an alien permanent resident status, DHS may detain and initiate removal proceedings against the permanent resident. See 8 U.S.C. § 1227; see also 8 U.S.C. § 1256 (allowing DHS to rescind an alien's adjustment of status).

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Revised National Security Adjudication and Reporting Requirements
Page 2

Revised Guidance

A definitive FBI fingerprint check and the IBIS check must be obtained and resolved before an Application for Adjustment of Status (I-485), Application for Waiver of Ground of Inadmissibility (I-601), Application for Status as a Temporary Resident Under Section 245A of the Immigration and Nationality Act (I-687), or Application to Adjust Status from Temporary to Permanent Resident (Under Section 245A of Public Law 99-603) (I-698) is approved. USCIS will continue to initiate FBI name checks when those applications are received. Where the application is otherwise approvable and the FBI name check request has been pending for more than 180 days, the adjudicator shall approve the I-485, I-601, I-687, or I-698 and proceed with card issuance. The FBI has committed to providing FBI name check results within this timeframe.

There is no change in the requirement that FBI fingerprint check, IBIS check and FBI name check results be obtained and resolved prior to the adjudication of an Application for Naturalization (N-400).

Pending further guidance regarding post-audit reporting and tracking requirements and modifications to associated quality assurance procedures, applications approved pursuant to this memorandum shall be held at the adjudicating office. If derogatory or adverse information is received from the FBI after the application is approved, USCIS will determine if rescission or removal proceedings are appropriate and warranted.

Subject to the reporting requirements set forth in the February 16, 2007, memorandum titled "FBI Name Checks Policy and Process Clarification for Domestic Operations," an application or petition may be denied, dismissed, administratively closed, withdrawn, or referred to the Immigration Court at any time.

Questions regarding this memorandum should be directed through appropriate supervisory and operational channels. Local offices should work through their chain of command.

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Back

U.S. Citizenship and Immigration Services Chicago IL Processing Dates Posted July 15, 2008

The processing times shown below are a tool for our customers to gauge our current processing times. When applications and petitions are completed within our target timeframes, that goal will be shown in the data display.

The processing times shown below are for applications that have just been completed. If you have just filed your application, these timeframes may not reflect how long your application will take to be completed. We encourage you to check this page periodically before inquiring about your case. The processing times are updated monthly.

USCIS has received a significant increase in the number of applications filed. In July and August, nearly 2.5 million applications and petitions of all types were received. This compares to 1.2 million applications and petitions received in the same time period last year. This fiscal year, we received 1.4 million applications for naturalization; nearly double the volume we received the year before. The agency is working to improve processes and focus increased resources, including hiring approximately 1,500 new employees, to address this workload.

As a result, average processing times for certain application types may be longer. In particular, naturalization applications filed after June 1, 2007 may take approximately 13-15 months to process.

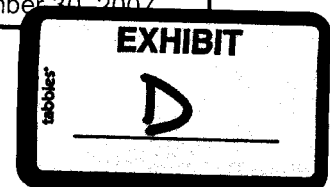
We offer a variety of services after you file. For example, for most kinds of cases you can check the status of your case online.

For more information about when and how to contact us, whether your case is outside our processing time or if there are other issues, please see our customer guide –

Case Services - How do I... know what kind of services are available to me after I file my application or petition?

District Office Processing Dates for **Chicago IL** Posted July 15, 2008

Form	Form Name	Processing Timeframe:
I-131	Application for Travel Documents	February 03, 2008
I-485	Application to Register Permanent Residence or Adjust Status	January 11, 2008
I-600	Petition to Classify Orphan as an Immediate Relative	January 18, 2008
I-600A	Application for Advance Processing of Orphan Petition	January 18, 2008
I-765	Application for Employment Authorization	January 04, 2007
N-400	Application for Naturalization	July 25, 2007
N-600	Application for Certification of Citizenship	December 30, 2007



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[Back](#)

08-28-2008 01:56 PM EDT

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